

OLC: 78-2939
11 August 1978

Pro/Leg

MEMORANDUM FOR: Legislative Counsel
Deputy Legislative Counsel

FROM: Acting Chief, Coordination and Review Staff

SUBJECT: Compartmented Clearances/"S. Res. 4"
Problems

STAT

1. ☐ I have confirmed my interpretation of P. L. 95-94 with Bob Malstrom, in the Secretary of the Senate's office, and with the Senate Legislative Counsel. The currently operative legislation was designed to give Senators greater flexibility in utilizing their allowances for administrative, clerical and legislative staffs. A Senator who wants to have an individual responsive to him aid in his committee work basically has two choices:

--Under Section 111(b)(2), he can arrange for the appointment of such an individual to the staff of the committee or subcommittee. These people become regular committee staffers; they are paid by the committee and are subject to all rules applicable to any other committee staffer. In short, these are not "S. Res. 4" problems at all, and we have no problem in according them compartmented clearances. The SSCI staff is set up along these lines. It is important to note that when a Senator arranges for one of these appointments, there is an automatic reduction in the amount of money authorized for compensation to employees in his own office. There is no automatic increase in the committee's appropriation. The funds deducted from the amount available for payment of the Senator's personal staff revert to the Treasury. If the committee does not have enough money available to pay its new staffer, it must seek a supplemental appropriation.

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--The Senator's second choice is to use Section III(c), which is a continuation of 105(c)(7) of S. Res. 4. Here a Senator designates employees in his office to assist him in committee work. The designee is accorded "all the privileges" of a professional staff member of the committee (except for the key item we are concerned with), but he remains an employee of the individual Senator. He is paid out of the appropriation for the Senator's staff; not by the committee, and he is not responsible to the committee staff chief. This is the classic "S. Res. 4" problem.

STAT 2. ☐ I believe there are two alternative ways to proceed:

(a) We can remain firm in our position that compartmented clearances will not be granted to "S. Res. 4" [i.e., Section III(c)] staffers. In dealing with problems such as the Morgan/Stirk and Bumpers/Parkinson cases, we can stress that nearly everything the staffer needs to know to be of use to the Senator can be provided to the staffer on a noncompartmented basis, and that we always stand ready to brief the Senator personally. We can then argue that if a Senator still feels strongly about his staffer's need for a compartmented clearance, the solution is for the Senator to secure the staffer's appointment to the committee staff under Section III(b)(2).

(b) The alternative is to modify Section D of the DCI's Guidelines and Procedures by adding the following provision at the end of that Section: "The DCI will, however, consider on a case-by-case basis the granting of compartmented clearances to employees designated in accordance with Section III(c) of the Legislative Branch Appropriation Act of 1978 (P.L. 95-94, 91 Stat. 653). Requests for such clearances will be considered only when made in writing by the Senator making the designation, endorsed in writing by the Chairman of the committee with respect to which the designation is made, and accompanied by a written pledge by the designee to abide by all rules and regulations pertaining to the handling of classified material that are applicable to regular staff members of the committee."

I strongly recommend alternative (a) for the reasons set out below.

STAT 3. ☐ Alternative (a) preserves the integrity of the DCI's recently promulgated guidelines, brings to the attention of Senators like Morgan and Bumpers the fact that they have the solution to their problem in their own hands, and leaves the matter to be negotiated between Senators and committee Chairmen. The end result could be larger SSCI-type staffs, but from our point of view this would be preferable to numerous "S. Res. 4" staffers with compartmented clearances.

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4. ☐ Alternative (b) would:

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- Undercut the thrust of the President's and the DCI's expressed determination to reduce access to sensitive intelligence information.
- Endanger DOD and NSA acceptance of the new program for centralized OLC control of compartmented clearances for the Legislative Branch. The Secretary of Defense and head of NSA could conclude that they were misled as to the DCI's intentions.
- Create problems in our relationships with committee staff chiefs who have been helpful to us.
- Create a potentially large demand for compartmented clearances. While we can eliminate the SSCI membership from our calculations, an argument could be made that "S. Res. 4" staffers on Appropriations and Armed Services Subcommittees other than Defense and Intelligence have a need for access. Opening the door to "S. Res. 4" staffers weakens our arguments for holding down compartmented clearances among regular staff of nonoversight committees, as well as the GAO and others (see, for example, the just-received letter from Don Fugua on Dr. Sheldon of the Library of Congress). We must also consider the possibility that personal staffers in the House will secure an equivalent to Section 111(c) and then also seek compartmented clearances. Thus, while we can probably calculate the number of more or less immediate requests we would receive under alternative (b), the potential over the long term would be much greater.

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5. ☐ An argument probably can be made that the compartmented classification system is itself something of an anachronism, and if I were considering the "S. Res. 4" problem in the abstract, I think I might come out somewhat differently on this issue. But given the dynamics of the present situation (expressions of Presidential and DCI concern about leaks, the launching of a new program to centralize control of compartmented clearances on the Hill, etc.), I think we would be unwise to recommend a course of action [alternative (b)] that would be interpreted as a major retreat. ☐ who have dealt with this problem far longer than I, have reviewed this memorandum and endorse its recommendation.

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Attachments

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